

FY13 Prevailing Wage Law Annual Report

Executive Summary

Beginning with contracts executed on July 1, 2009, Montgomery County's Prevailing Wage Law is modeled after the Federal Davis-Bacon and State of Maryland's Prevailing Wage laws. The Prevailing Wage Law mandates that workers on qualified County construction projects be paid Prevailing Wage for their work classification. The Prevailing Wage Rate is the rate paid for comparable work in the private sector within the County. The rates are calculated by the State, based on surveys of construction company employers.

FY13 marks the fourth year of operation of the Prevailing Wage Law. During FY13, Montgomery County monitored a total of 30 projects and 24 task orders, including four federally funded projects; sixteen County Department of General Services projects; nine County Department of Transportation projects and one project for the Department of Environmental Protection. Montgomery County also monitored the County Site Work contract, a task order driven contract with projects around the County. A total of eight construction projects and eleven task order projects were closed out during FY13.

Contractor Compliance and Monitoring, Inc. (CCMI), the County's labor compliance monitoring contractor launched twenty investigations during the year. These investigations varied in their sizes and scopes and their results demonstrated the need for the County to be vigilant in its oversight of construction contracts subject to the County's Prevailing Wage Law. In FY13, CCMI assessed penalties in the amount of \$73,020 for misclassification and late submission of payrolls. Attached is CCMI's annual report to the County, including detailed reports on all projects and observations on industry trends.

Montgomery County, Maryland Labor Compliance Annual Report Fiscal Year 2013



Overview:

Montgomery County Maryland implemented its Prevailing Wage Law in July 2009. Contactor Compliance and Monitoring Inc. was hired to assist the County in implementing this program. CCMI has worked with the County to create the following policies, practices and protocols:

1. An audit process to specifically address the requirements of the County's Prevailing Wage Law;
2. The educational aspect of labor compliance at the Preconstruction Conferences (including creating a specific handout for projects funded by County funds and a separate handout with tailored information relating to federally funded Davis-Bacon projects);
3. A monthly process of auditing payrolls and providing prompt feedback to contractors and the County's Prevailing Wage Program Manager;
4. An onsite interview format and report tailored to the provisions of the County's Prevailing Wage Law;
5. Drafts of documentation for final project close out, draft of final report to Director and addressing due process appeal rights of contractors with County;
6. Updated forms, processes and protocols as the County's labor compliance program matured and best practices were established.

Scope of Services Provided:

Work with Montgomery County to ensure proper language for Labor Compliance is in all contracts:

Status: Completed. Discussion and sample language provided to the Prevailing Wage Program Manager to be considered for County contracts, including prevailing wage language and language mandating the use of LCPTracker for the submission of electronic payrolls.

Work with Montgomery County to pull appropriate federal language and Davis Bacon wage determination for ongoing projects:

Status: Ongoing, for each new Davis Bacon funded project, CCMI consults with the County to identify the proper Davis Bacon wage determination for each project.

Conduct LCP Training at Preconstruction Conference meetings.

Status: On going. At least one preconstruction conference meeting is provided for each project. In a few instances on very long projects, more than one meeting per project to provide information to subcontractors who are beginning work later on the project and did not have the opportunity to receive this information at the project start time.

Provide a phone line and e-mail contact where contractors and subcontractors can request clarification on prevailing wages, certified payrolls, and apprenticeship and compliance issues.

Status: On going. There are two full time employees dedicated as lead staff members to the Montgomery County projects: Jessica Finau and Steven Noguera. Four other staff members assist Finau and Noguera with audits, investigations and other issues which might arise.

State License Check and Check for worker's compensation.

Status: On going. This requirement is only set forth in certain County contracts and is checked for those contracts only

Monitoring of all Apprenticeship Requirements.

Status: On going. This verification occurs on all projects for all workers listed as apprentices. Both Maryland State regulations and Davis-Bacon regulations require that apprentices must be enrolled in a properly recognized apprenticeship program; all apprentices must be supervised by a journeyman-level worker in the same trade; and apprentices must be employed at a stated ratio to allow for proper supervision and on-the-job training. The Montgomery County ordinance provides that apprentices must be properly enrolled in an approved apprenticeship program. CCMI verifies that the apprentice is enrolled in such a program. Apprentices who work on County financed projects must be registered in a program approved by the Maryland Apprenticeship Training Council.

Monthly audit of certified payrolls forms.

Status: On-going. Audits are conducted on every project, every month, for every employee, for every contractor and every subcontractor. This includes: comparing the classification and wage rate listed on the certified payroll with the applicable Montgomery County rate; reviewing the amount of fringe benefit contribution claimed and verifying that the contractor subcontractor has properly calculated these amounts; verifying that any overtime and holiday time is properly paid; comparing daily reports and monthly interview sheets with the certified payrolls; and identifying any deficiencies.

Periodic review of Daily Jobsite Reports.

Status: On going. This is done periodically on a project-by-project basis. The frequency of this review depends on the length of the project, the number of subcontractors, the number of employees, and whether serious potential underpayments have been identified, etc.

Periodic jobsite audits and random interviews of workers.

Status: On going. Each month CCMI visits each jobsite at least once and interviews various workers. The number of the workers interviewed depends on the size of the project, the number of subcontractors on the project and any potential claims of under-reporting of hours/employees or misclassification. While the workers are selected randomly, CCMI does attempt to interview one or more workers from each subcontractor working on the project over the course of the project. In 2012-2013, CCMI conducted more than 2,000 interviews on 30 different projects.

Investigations.

Status: On going. Investigations are conducted when CCMI receives information either as a result of review of certified payrolls and related documentation, through employee interviews, or independent contact by employees that proper wages are not being paid. See separate section on investigations in this report.

Most investigations have focused around the misclassification of workers or a contractor's failure to list and/or pay employee(s) on certified payrolls the proper prevailing wage rate.

Monthly reports to Montgomery County and contractors.

Status: On going. In order to promote efficient compliance with the law, any deficiency identified must be communicated promptly to the prime contractor on each project. The prime contractor then contacts any applicable subcontractor regarding missing documentation, underpayment or other deficiencies listed in the report. To help expedite this process, a separate report for each subcontractor is prepared to allow the contractor to then quickly turn this report around to the affected subcontractor either by email or facsimile.

Each report details the certified payrolls which were reviewed, any missing or deficient documentation, identification of any underpayment of wages and other outstanding issues. If any documentation or clarifications were previously requested and not addressed by the subcontractor, this information is also noted on this report. The report also includes the total amount of any outstanding penalties for the late submission of payrolls.

These reports are sent each month to both the County and the prime contractor for each project. The prime contractor is asked to distribute these reports to their subcontractors and to follow up by providing the missing or corrected information to CCMI within 30 days.

An additional matrix summary of the projects, a report for each project and an expanded narrative of CCMI's activity was developed last year and provided to the County each month.

Communication of potential violations with recommended action.

Status: On going. In addition to the monthly reports outlined above, CCMI is in regular contact several times a week with the Prevailing Wage Program Manager regarding unresolved issues and investigations being conducted.

Communication with Contractors.

Status: On going. CCMI works with all contractors and subcontractors with the goal of amicably resolving issues related to violations, penalties and compliance. CCMI has daily individual phone calls, conference calls, emails and/or facsimile communications with contractors and subcontractors regarding these issues.

Summary Report to Montgomery County LCP designee at Project Completion.

Status: On going. At the close of each project, a final report is sent to the County. The report details, by contractor and subcontractor, each prevailing wage violation identified; the steps taken during the audit and/or investigative process; a narrative of the violation and any special circumstances; a discussion of the remedy (restitution); whether that restitution has been made by the effected contractor; and a recommendation to the Director of the Department of General Services regarding the imposition of penalties.

For federally funded Davis-Bacon projects, similar, but not identical, services are performed:

1. Confirm the Davis-Bacon wage determination applicable to each project. The County is responsible for inserting the appropriate Davis Bacon language in the bid specifications and construction contract.
2. Conduct an onsite meeting with Contractors to review Davis-Bacon requirements for prevailing wages on the project.
3. Provide a copy of the Davis Bacon required postings for contractors to post on the jobsite.
4. Collect and review certified payroll and related documents each month from contractors. Review certified payrolls for proper wages and fringe benefits paid. Compare Davis-Bacon prevailing wage requirements to certified payroll to ensure that the proper wages and fringe benefits are paid. While Davis-Bacon wage rates and work classifications are identical in many instances, they are NOT always so.
5. Collect “certifications” for all apprentices working on the project (who must be enrolled in an approved Bureau of Apprenticeship Training (DOL) apprenticeship program).
6. Conduct monthly jobsite visits interviewing employees on the project to verify proper prevailing wages are paid and verifying that the appropriate Davis-Bacon poster is posted on site.
7. Provide Agency with report on prevailing wage compliance/deficiencies on a monthly basis.

8. Provide prime contractor with monthly reports of audit finding and probing detailed information relating to any missing documentation or deficiencies in Davis Bacon prevailing wage compliance requirements.
9. Conduct additional investigations as may be warranted by payrolls and interviews.
10. Work with contractors to ensure full compliance with prevailing wage and apprenticeship requirements.
11. Imposition of penalties (only as required).
12. Final project report to County at conclusion of project.

Additional Services: CCMI continues to provide additional assistance, including a discussion of procedures, protocols and forms for the administration of the County's Prevailing Wage program. Among these are enhancements to preconstruction handout information, monthly reports to contractors and the final close out procedure and due process requirements for the contractors. CCMI has worked with the County Prevailing Wage Program Manager and County staff to discuss and, when appropriate, recommend or draft/update materials, forms, and procedures for the administration of this program.

Projects:

During Fiscal Year 2013, Contractor Compliance and Monitoring Inc. (CCMI) provided Labor Compliance Services for 54 projects and task orders in Montgomery County.

Federally Funded Projects:

- East Gude Drive Bridge Rehabilitation (DOT)
- Shady Grove Bike Path (DOT)
- Strathmore Concert Hall (DGS)
- Silver Spring Transit Center (DGS)

These projects include federal funding and are subject to the federal Davis Bacon and Related Acts for prevailing wage compliance.

County Projects:

Department of General Services:

- 3rd Dist. Police Station
- Animal Shelter
- Equipment Maintenance & Operations Center
- Dept. of Liquor Control Warehouse
- Fillmore Music Hall Renovation
- Gaithersburg Library Renovation
- Judicial Center Annex
- MacArthur Bikeway
- Olney Library Renovation
- Plum Gar Recreation Center
- Public Safety Headquarters

Salt Barn
Scotland Rec Center
Silver Spring Library
Travilah Fire Station #32
White Oak Recreation Center

Department of Transportation:

Century Blvd
Dale Drive
Father Hurley Boulevard Extended
Garage #5 Renovation
Garage #7 Renovation
Old Georgetown Bridge
Sidewalk at Dale Drive
Watkins Mills Road Extended
White Ground Road Bridge Replacement

Department of Environmental Protection

Stoney Creek Stormwater Management

Task Orders:

401 Hungerford Garage Restoration
Bauer Community Center
Brookville Bus Depot- Pump & Clean Baysaver System
Brookville Center Signs
Brookville Depot
Brookville-Flagpoles
Chevy Chase Library
Curb & Gutter Replacement
Fire Station-#28
Germantown Fire Station #34
Health & Human Services
Holiday Park Senior Center
Metro Branch Trail
Mid-County Soccer Field
Montgomery County-Detention Center
Overlay of Primary and Arterial Roads
Potomac Rec Center
Roadway Patching
Roundhouse Learning Center
Scotland Rec
Sidewalk Construction
Silver Springs Library Utility Work
Trench Drains

White Oak Repairs

Projects Closed Out:

- Bauer Community Center
- Brookville Depot
- Brookville-Flagpoles
- Chevy Chase Library
- Dale Drive
- Father Hurley Blvd.
- Filmore Music Hall
- Garage #5
- Germantown Fire Station #34
- Metro Branch Trail
- Mid-County Soccer Field
- Montgomery County Detention Center
- Old Georgetown Bridge
- Potomac Rec Center
- Roundhouse Learning Center
- Shady Grove Bike Path
- Trench Drains
- Watkins Mill Road
- White Ground Road Bridge

Investigations:

Investigations were launched on 20 contractors on the 14 projects identified below. An investigation is more than review for deficiencies. An “investigation” is launched by CCMI when CCMI receives information that employees are not being paid the correct prevailing wage rate, are not paid for all hours worked (underreporting of hours), are not being paid overtime, or are being paid in the wrong wage category (misclassification).

The investigation may include contacting each of the employees listed on the certified payrolls via letter (in both English and Spanish), asking them a series of questions about the type of work they perform and the hours worked on the project and asking them to contact us or respond if they believe they were not paid the correct wages or paid for all hours worked. These “letters to workers” are not a routine form, but are tailored to address the situation with each subcontractor under investigation. For those employees who respond to the letters or employees who have already spoken during onsite interviews, CCMI calls these employees to gather additional information. (These conversations are held in English or in Spanish).

An investigation frequently includes requesting additional documentation from the contractor or subcontractor and then reviewing timecards, pay stubs and cancelled checks and cross checking that information against the certified payrolls submitted. At times, CCMI also requests copies of Daily Job Logs from the prime contractor, particularly in instances where an

employee is actually interviewed on the jobsite, but that employee does not appear on the certified payrolls.

3rd District Police Station & Plum Gar Recreation Center-Subcontractor-Daly Masonry

This subcontractor did not pay employees in full for all wages due to the fact they were going out business. The prime contractor, Keller Brothers, was aware of the financial difficulties of this contractor for some time and therefore had withheld sufficient funds to pay out all wages due to employees.

3rd District Police Station-Subcontractor-American Construction Associates

This subcontractor was writing checks to employees for several weeks with insufficient funds in the bank account. CCMI and the prime contractor, Keller Brothers, worked together to gain information from workers to identify which weeks wages were still due and unpaid. Keller Brothers, the prime contractor, issued restitution payment to all employees.

Olney Library Renovation-Subcontractor-American Construction Associates

This subcontractor was writing checks to employees for several weeks with insufficient funds in the bank account. CCMI and the prime contractor, Milestone Construction, worked together to gain information from employees to determine what wages still needed to be paid. Milestone Construction, the prime contractor, issued restitution payment to all employees.

Olney Library Renovation-Subcontractor JRA Contracting

CCMI interviewed employee Eddie Porras performing work of a Plumber in December 2012 but the payroll indicated he was an Unskilled Laborer. The following month the subcontractor contacted CCMI regarding the monthly report requesting restitution for employee. Subcontractor stated that employee was “using a trowel to secure sleeves with mortar” which they did not believe to be Plumbing work. CCMI confirmed that this was indeed Plumbing work as the employee was using Plumbers tools and performing duties of such trade. For several months no further response was received. In April 2013 CCMI received a letter from the subcontractor stating they did not agree with the assessment but would agree to pay the funds due and to contact them regarding what was needed. Prior to sending a response to the subcontractor, in May 2013, CCMI updated the monthly report to request restitution pay for all hours worked by Eddie Porras as Plumber. Further information had been given to CCMI on the May monthly site visit of video and pictures taken by other employees working on the project. These other employees had no affiliation with JRA Contracting but confirmed that Eddie Porras was performing Plumbing duties. Employee confirmed that for all hours worked on project he had been doing the same type of work. No response has been received from the subcontractor to date. Eddie Porras did contact CCMI and stated that he was sent home from work shortly after CCMI submitted the wages due worksheet to prime contractor, in July 2013, for Eddie Porras. The investigation is still ongoing.

Gaithersburg Library Renovation-Subcontractor-Bethesda Asphalt

CCMI was contacted by an employee of Bethesda Asphalt regarding possible wage underpayment. The employee faxed a few pay stub details for CCMI to review against payrolls. At this time subcontractor was not set up online to use the LCPtracker system. CCMI contacted prime contractor, Henley Construction, to get subcontractor entered into the LCPtracker system so that certified payrolls and labor compliance information could be submitted. After a few weeks all payrolls were accounted for and CCMI requested the pay stub details, showing hours and pay rates, as well as canceled checks to verify the information found online. All information online was verified. Employee was confused on how to read his pay stubs due to several line items listed. Contractor was showing payment for project as part of regular hours worked each week and then adding a different line item for the difference in prevailing wage rate. CCMI contacted the employee to discuss the situation and, subsequently, closed the investigation.

Equipment Maintenance & Operations Center-Subcontractor-B&R Roofing

The CCMI field inspector observed Millwrights doing Pipefitting/Steamfitting work onsite in March 2013. This issue was reported to B&R Roofing through CCMI's monthly audit. The subcontractor was asked to reclassify the worker in the correct classification and to issue a restitution check for the difference in wages. The Subcontractor's company accountant called to state that employees were not doing Steamfitting work because they were not working with high pressure steam and that was what determined "Steamfitters" scope of work. Additionally, the accountant stated that the employees knew that Steamfitters were paid the highest rate on the project and that's why they were saying this was type of work performed when interviewed. CCMI informed the accountant that its field inspector observed employees performing Pipefitting/Steamfitting work. The accountant stated that employees had been called in for questioning and had told him that the inspector had just pulled the employees aside, asked them the questions, and then walked away. CCMI informed the accountant that was not true and also clarified that Steamfitting and Pipefitting were the same classification on the wage determination used for this project and employees had been doing Pipefitting therefore needed retro-pay. No further response has been received from subcontractor. The investigation is still ongoing.

Equipment Maintenance & Operations Center-Subcontractor-Merc Construction

Several employees interviewed by CCMI field inspector stated that they were shorted between two and five hours per week and not paid appropriate prevailing wages for hours worked. CCMI requested timecards, check stubs and canceled checks to verify information as reported online via LCPtracker for hours worked and pay rates. All information appeared to match. Additional letters sent to employees' home addresses to try and gain further detail about shortage of hours and wages. The investigation is still ongoing.

Equipment Maintenance & Operations Center-Subcontractor-Parkinson Construction

Per onsite inspection observations and interviews, work being performed by Laborer-Mason Tenders has always been classified as Unskilled Laborers on the payroll records by this subcontractor. CCMI generated a spreadsheet of all Unskilled Laborers hours for misclassification of employees. A letter, reviewed by the County, was sent to Nigel Parkinson, with spreadsheet of funds to be paid in November. 2012. CCMI and the County had much correspondence with Harold Hamlette, Sr. VP, throughout the month of December. CCMI requested all Daily Logs to verify with payroll records submitted online. The daily logs, completed by the Superintendent, showed that hours worked by "Unskilled Laborers" were the same dates and hours which employees had been observed and interviewed as performing Laborer-Mason Tender duties. In February 2013, there was a meeting with the County, Parkinson, and CCMI(via teleconference), during which Parkinson stated that their records were correct and employees had not been misclassified or underpaid. County attorney issued a letter to Parkinson in April informing them to issue retro-pay to all Unskilled Laborers as Laborer-Mason Tenders. Parkinson has yet to issue any restitution funds to employees, but did hire legal counsel. Several employees were let go in March after an adjusted spreadsheet was run and forwarded to Parkinson. Investigation concluded by CCMI, but the County and Coakley & Williams have withheld sufficient funds due to cover wages shown on spreadsheet.

Equipment Maintenance & Operations Center-Subcontractor-US Construction

Employees reported to CCMI field inspector in December, 2012 they were being paid \$15/hour for all hours worked. Additionally, many stated that they work overtime, 48 hours per week, but are only paid for 40 hours. Check stub details and canceled checks were requested and submitted and all seem in order. Additional interviews were done by CCMI's field inspector to clarify the situation in January 2013. Some pay stubs were submitted to CCMI's field inspector by employees showing the \$15 per hour pay rate and paid bi-monthly when online records show payments issued weekly. The check stub details submitted by employees show check numbers that did not correspond to the numbering system online. In February, 2013 Jessica Finau requested 2 additional weeks of documents from the subcontractor, in an attempt to match signatures for employees week to week. In March 2013, Jessica Finau requested bank statements from the subcontractor to see what checks have cleared their account. CCMI believes the subcontractor is copying the backs of \$15 checks offline and photocopying front of LCPtracker reported checks to prove have canceled checks as requested. In April, 2013 Jessica Finau received bank statements for several months. CCMI checked this information and requested further detail on specific check numbers for which dollar values did not match online payroll records and specific canceled checks that had not cleared. In May 2013, CCMI requested all bank statements for the project to verify against payrolls online. The investigation is still ongoing, but employees have stated that for several weeks have been paid proper wages.

Judicial Center Annex-Subcontractor-Parkinson Construction

CCMI was contacted by an employee of Parkinson who previously had been assigned to EMOC project. Employee confirmed that a similar misclassification issue was occurring on this site where employees working as Laborer-Mason Tenders were being misclassified as Laborers-Unskilled for half a day of work and as Bricklayers for the other half of the day. In this way Parkinson was covering themselves for about half of the Mason Tender hours/wages that would be due, should CCMI run a spreadsheet for all Unskilled Laborers as had been done on the EMOC. CCMI contacted Montgomery County. CCMI was advised to hold on any further investigations pending the outcome of the EMOC project at which time the issue would have been clarified and a standard set for this and future projects. Employees have continued to contact CCMI, stating that from about third week of March and going forward, many employees had been let go due to lack of work. The employees were aware that there was no shortage of work being done by Parkinson. It appears that this subcontractor has now terminated the employment of most or all employees who were due restitution for EMOC.

Watkins Mill Road-Subcontractor-Olney Masonry Corporation

On September 13, 2011 CCMI inspector Jim Dugent interviewed several employees doing Concrete Finishing/Cement Masonry. The payrolls submitted for this date list all employees as Unskilled Laborers. When this misclassification was brought to the attention of the subcontractor they did not feel that the "Unskilled Laborers" had been misclassified. Olney Masonry requested information regarding written authority supporting the position that Laborers could not pour concrete or do finishing. CCMI then forwarded to Olney Masonry the description from the Maryland DLLR which lists the types of jobs an Unskilled Laborer may perform. Subcontractor issued restitution to affected employees.

Fillmore Music Hall-Subcontractor-Elio Bros.

This employer listed the employees, hours worked and wages paid, but never paid the employees for the work performed. Each month, a new crew of workers would be on the jobsite and new employee names would appear on the certified payrolls. CCMI first became aware of the failure to pay during the third month of the project when CCMI interviewed these employees and the employees claimed that they had not been paid. CCMI contacted ALL employees listed on the certified payroll by letter in both English and Spanish. Several of these workers responded. General Contractor, Davis Construction, set up an account for this subcontractor because Elio Bros. did not have sufficient funds to pay employees for several pay periods. In this manner Davis Construction verified that employees were paid for all hours worked and signed for their checks received during those pay periods. CCMI has calculated wages due to those employees for whom Elio Bros. could not produce a cancelled check showing proof of payment to the worker.

We have encountered substantial resistance in producing documentation from this subcontractor throughout the project. After eleven months of requesting evidence of correct payments made to employees and some additional emails from Davis Construction, the paperwork began to be submitted. From April-June 2012 most of the issues relating to underpayments of workers were resolved. There are six employees for whom no payment was

ever made. Letters were sent by CCMI to these employees to verify their correct address so that funds could be paid to them. Thus far, one letter has been returned due to insufficient address and one has been signed for (registered mail), confirming the correct address. There were four employees interviewed in June 2011 for which Elio Bros. claims no knowledge. It is CCMI's belief these were undocumented workers and so were not reported on the certified payrolls. There are also five additional employees which were disputed by Elio Bros. as having been paid for all hours worked. This matter has been addressed directly with the County. This investigation is completed except for the contact with the employees for whom restitution is still due. Davis Construction and CCMI are working together to see that these wages are distributed to the employees.

Fillmore Music Hall-Subcontractor-Cornerstone Asset Services

Initially, overtime was not paid correctly. CCMI requested correction by the subcontractor and received copies of retro-checks issued. When CCMI requested proof of payment made to employees, namely canceled checks, nothing was submitted. Further information was requested, as to proof of original payments made to employees. However, no evidence to this effect was submitted by subcontractor. General Contractor and CCMI tried to contact the subcontractor, who had gone out of business, to no avail. Letters were sent to the last known addresses of employees, requesting confirmation of what wages were paid for this project. No response was received. CCMI has completed its investigation and closed the matter with a zero sum audit, showing all wages outstanding, on the Project Closeout Report. The matter is being handled by the County.

White Oak Community Center-Subcontractor-Acoustical Concepts Inc.

Employees of this subcontractor filed a complaint of being shorted on pay due for hours worked during the last two weeks onsite. General Contractor, E.E. Reed, informed CCMI that this subcontractor no longer worked onsite due to a contract dispute. It appears that the subcontractor is no longer in business, which has made it difficult to conduct a full investigation. Letters were sent out to all employees in December, 2011, requesting information on their last paycheck received and hours worked for that time period. Many were returned unopened due to insufficient addresses. Two letters were returned with the workers claiming they were not paid for all hours worked onsite. Two other employees called CCMI and wanted to know when their checks would be available for pick up. CCMI informed them that this matter is still ongoing as the subcontractor is no longer in business and that the funds would be paid either by E.E. Reed or the County when the project is completed.

Dale Drive-Prime Contractor-Ardent Construction

The CCMI inspector interviewed employees working in various trades yet all were listed as Unskilled Laborers on the certified payrolls submitted. When brought to the attention of the contractor, the misclassification was corrected and restitution was issued to some employees. A conference call also ensued between CCMI, the County, and Ardent Construction. Part of the discussion concerned certain employees who were missing from the payrolls on the date of interviews. Ardent Construction contends that these employees were not onsite the date

interviewed and has provided CCMI with timecards and check stubs showing hours worked and pay received for the date in question. Ardent Construction contends that CCMI's field inspector merely copied the foreman's log from the jobsite trailer and did not interview the employees. This explanation does not explain how there are pay rates listed on the report from the field inspector. CCMI included these outstanding wages due to employees on the closeout report issued to the County on October 9, 2012.

Dept. of Liquor Control Warehouse-Subcontractor-Simpson Unlimited

CCMI inspector Jim Dugent interviewed several employees doing roofing work, yet the certified payrolls classified them as Unskilled Laborers. When brought to the attention of the contractor, the owner stated the employees were not roofers and did not know about roofing work and it was not his fault if the "laborers" helped the roofers out with their work. After some conversation it was clarified he needed to pay the employees according to the type of work performed and not what he thought their skill level was. The contractor has issued restitution to one crew of employees for the difference in roofers' wages due and the payrolls have reflected roofing and laborers work for employees since that time. Letters were sent to all employees to verify if any other workers feel they are due restitution for misclassification. Most letters were returned unopened. The investigation concluded with retro-pay issued for one crew only because contractor stated only this one crew was helping with the roofing work. CCMI had no information to dispute the subcontractor's position as to the other crew of Laborers.

White Ground Road Bridge-Prime Contractor-Rustler Construction

CCMI's field inspector interviewed two employees of Rustler Construction who did not appear on the certified payrolls for the date in question. Once informed, the contractor reviewed their records and informed CCMI that their payrolls were correct and the employees did not work on the date of interview. Rustler Construction contends that CCMI's report is faulty due to cut/paste from previous months report and has pointed out inconsistencies within the report itself, i.e. number of workers interviewed states 5 when 11 persons were interviewed, etc. CCMI investigated the matter further by comparing the interviews from the prior month to the April 2012 report in question. Although some errors did occur on the April 2012 audit, this does not explain how one of the employees was not listed, yet was previously interviewed, nor why the pay rate changed for another employee from one month to the next. CCMI informed Rustler Construction of its findings and requested that Rustler issue restitution to the employees. Rustler maintains they do not owe the employees because they did not work. The County stood behind the interviews of CCMI's field inspector. CCMI input this "outstanding wage" amount on the Project Closeout Report for the County January 18, 2013.

East Gude Bridge Rehabilitation

CCMI was able to verify the cash fringe amounts for Flipppo, however there remains wage violations for many of their employees due to the fact that Flipppo may not count their ESOP deduction/contribution as an approved fringe benefit. ESOPs are not included in the list of

presumptively approved fringe benefits plans. However, an ESOP can meet prevailing wage approval if Flippo were to obtain an approval letter signed by the Secretary of the Department of Labor that the ESOP contributions meets all of the required prevailing wage regulations to be qualified as a fringe benefit. Flippo, after much argument, was unable to produce such a letter.

Tabora Welding was onsite but has not provided certified payrolls for the project. CCMI cannot calculate the wages due until CCMI receives a job log. There are a few other minor issues with subcontractors on the project. CCMI sent out a “final request” of documentation from the subcontractors. CCMI is waiting for direction from Montgomery County if they wish CCMI to perform a zero sum audit (calculate wage due under the presumption that no wages have been paid to workers as no documentation has been submitted).

Silver Spring Transit Center

Project is currently on hold waiting for additional work to start for the corrective work that needs to be performed. There are a few contractors who have outstanding wage violations and appear to be slow in responding (several months) on providing corrections and needed documentation. Most other contractors are currently compliant and have corrected any wage violations /deficiencies.

Final Investigation Summary:

While CCMI has outlined the “investigations” that were conducted and are conducting, there are scores of deficiencies identified each month through the regular monthly audit process. In most instances, contractors and subcontractors are cooperative in correcting these items. Any underpayment of wages and fringe benefits also requires a correction of the certified payrolls, which must be reviewed again by CCMI. We also require proof of any restitution paid to employees so we follow up with the contractor or subcontractor to receive and review copies of cancelled checks.

Trends:

The Prevailing Wage Compliance program has just completed its fourth year. For some contractors, this is still new and questions frequently arise from contractors and subcontractors. CCMI and LCPTracker staff are easily accessible by telephone and email. CCMI established an office in Severna Park, MD where full time auditing work is performed in addition to the work done at CCMI’s other offices. CCMI staff in Maryland also conducts all preconstruction conferences and all of the jobsite interviews.

LCPTracker:

The County requires all contractors and subcontractors on all projects to use LCPTracker to submit certified payrolls and related labor compliance documentation. The cost for the LCPTracker program is included in the fee for services paid to CCMI. The use of LCPTracker provides several benefits to the contractor and the County. First, it provides uniformity of forms, data and information by requiring all contractors and subcontractor to use the same forms and

data entry system. Secondly, it allows 24-7 access of the records by the County and CCMI. For the contractors and subcontractors, it permits immediate submission of certified payrolls, all within the control of the contractor or subcontractor. Once the individual contractor “certifies” the payroll, it is immediately submitted, date stamped, logged and available to CCMI for auditing. This prevents loss of the documentation and complaints that documents were previously submitted and allegedly lost, as well as the necessity of multiple submissions.

The use of LCPTracker is a green solution. This is in stark contrast to the previous system, which required the submission of massive amounts of paper containing certified payrolls, fringe benefit and related information.

However, LCP Tracker is only a tool and it is only as good as the information entered by the contractors. If incorrect information is entered by the contractor, then there is typically a wage violation. Thus, CCMI does not rely merely on the LCPTracker “alert” system. CCMI individually reviews and audits every certified payroll submitted.

While there have been some complaints by subcontractors relating to the LCPTracker system, these have been relatively few, particularly in light of the massive number of subcontractors and documents submitted on the 54 projects this year. CCMI found that many of the complaints were the result of a subcontractor’s unwillingness to learn the LCPTracker system. LCPTracker provides online training of their system, as well as interface uploads. Additionally, LCPTracker provides free, twice weekly one-hour webinars that any contractor may attend. The purpose of these sessions is to assist that contractor with questions about the system. While CCMI tries to answer questions relating to a contractor’s use of LCPTracker, CCMI found most of the complaints were because the subcontractor had not bothered to review the online tutorial, attend the webinar or had not called LCPTracker’s technical support line. Most contractors are now comfortable with this system of submitting documentation. It should be noted that many other states and federal agencies are moving to the electronic submission of certified payrolls. The State of Maryland recently introduced its electronic payroll filing system.

Fringe Benefits:

Contractors who do not contribute to a union trust fund or an approved hours bank program for fringe benefits are required to amortize or annualize the value of certain benefits they pay over the course of all hours worked by those employees. As this sometimes requires calculations to be done for each employee to arrive at this fringe benefit number, open shop contractors are frequently confused.

The rules and regulations relating to pension contributions are distinct from those relating to health and welfare, vacation and holiday pay paid by contractors. Many contractors have worked on publicly funded projects for years, sometimes decades, without ever having anyone review or audit the projects. Thus, improper payments and “habits” have sometimes been adopted by contractors and subcontractors which now need to be corrected. Many open shop contractors try to claim “fringe benefits” such as uniform costs, truck fees, cell phone, gas reimbursement and mileage allowance, none of which are approved as meeting prevailing wage guidelines for fringe benefits. Additionally, certain types of “benefits” such as an ESOP (Employee Stock Option Plan) or HSA (Health Savings Account) requires special approval for

prevailing wage credit to be issued. Many contractors are unaware of these requirements or that the particular type of benefit the contractor provides does not meet the prevailing wage guidelines. This “misunderstanding” by contractors often results in underpayment of wages and penalties being issued against the contractor.

Even some contractors on the federally funded projects are not compliant with Davis-Bacon requirements. Prior to the County’s ordinance, these contractors believed that they were in compliance with state or federal prevailing wage law. In reality, even those contractors who have performed federal Davis-Bacon work in the past may have never been audited. As such, the proper implementation of the County law (as well as the Davis-Bacon requirements) has identified numerous violations. While many of these are minor, some are substantial.

Apprentice Issues:

In many instances, contractors will claim to use an “apprentice” who is not enrolled in the Maryland Apprenticeship Training Council Program. CCMI verifies that all apprentices are bona fide enrolled apprentices and confirms with the appropriate Apprenticeship committee, the proper level of wages and benefits set forth in the Apprenticeship Standards and approved by the Maryland DLLR and the US DOL. The Montgomery County ordinance requires that apprentices be an approved through the State of Maryland’s apprentice program. (All apprenticeship programs approved by the State of Maryland are also approved by the Bureau of Apprenticeship Standards with the U.S. Department of Labor.)

A substantial number of apprentices have been identified as being enrolled in an approved apprenticeship programs in neighboring jurisdictions (Virginia and D.C.) The contractor is under the mistaken impression that these individuals may be paid the apprenticeship rate when working in Maryland. This is not the case and has resulted in several instances where restitution checks needed to be issued and penalties were assessed (A worker who is not enrolled in a Maryland approved apprenticeship program must be paid at the full journeyman rate plus full fringe benefits.)

Wage Violations:

The typical wage violation from contractors and subcontractors stems from the use of an improper wage rate (either the contractor’s regular rate of pay or a “prevailing rate” used on a prior project). Sometimes the underpayment is due to the improper calculation of fringe benefits.

The misclassification of workers into lower paid trade classification remains an issue. The vast majority of the investigations conducted by CCMI involve the intentional misclassification and underpayment of workers. Any misclassification resulting in the need for restitution also includes a penalty assessment.

Onsite Interviews:

CCMI conducts interviews on all projects¹. During the course of interviewing employees, CCMI has noticed an increase in instances where an employee is interviewed and then not listed on the certified payrolls. When CCMI requests further documentation from the contractor for these employees, CCMI is routinely told that no such employee works for the company.

With some regularity, CCMI interviews third and fourth tier subcontractors working on a project. These subcontractors have not been disclosed, have not been set up by the contractor in LCPTracker as working on the project and no certified payrolls are being submitted. Often, employees state they are paid under the prevailing wage rate or paid in cash. When CCMI contacts the prime contractor relating to these third and fourth tier subcontractors, the prime contractor is sometimes unaware of such subcontractor and it takes several weeks, sometimes months, before payrolls are submitted.

Penalties:

There are a number of contractors who remain under the impression that if wage underpayments are corrected or the late payroll are subsequently submitted, that all penalties will disappear. CCMI has been clear at the preconstruction conference and throughout the project in advising the contractor that the County is within its right to assess a penalty for these violations and the penalties will not automatically disappear if the items are ultimately, albeit late, corrected. We frequently hear from subcontractors that they are not provided the proper wage rates by their prime contractor on the project. This lack of communication between prime and subcontractors results in a substantial number of wage violations and penalties.

Observations:

Contractors who are working on their second or third project with the County seem to now understand the proper requirements set forth by the County (Davis-Bacon Act for the federally funded projects).

With the increase of construction work during this heightened building season, some subcontractors (who are not familiar with the County's labor compliance program) are attempting to "cut corners" by underpaying employees through a variety of methods. While this is not a majority of the contractors, the investigation and enforcement of the prevailing wage requirements with these contractors does take an inordinate amount of time when compared to other auditing requirements. A typical error or mere deficiency typically takes a minimum of 3 months, sometimes longer, to resolve (1 month of work occurs before the payrolls are reviewed and the issue identified and provided to the contractor; 1 month for the subcontractor to correct the error and provide the correction and documentation to CCMI; 1 month to receive proof of restitution.) When contractors object or do not understand the basis for the deficiency or

¹ CCMI does not conduct interviews on every Task Order project as these are frequently of a short duration.

underpayment, it takes additional time to work with the contractor and subcontractor to resolve the issue.

The typical investigation can take 6 months or more. This is because a contractor in this instance may be falsifying records and therefore is reluctant to provide back-up documentation. It may take two or three requests before the documentation is provided. When documentation is produced, it is not for a single month of work, but for the entire project and frequently for all employees. This involves a massive amount of time to review and essentially re-audit the project comparing weekly time cards with payroll records and then to the certified payroll submitted. When employees are contacted by CCMI, it takes several weeks before we receive a response. This is typically followed up with additional phone calls and review of documentation from the employees. It is necessary that this process be thorough and complete. First, CCMI does not want to accuse a contractor of a violation without sufficient proof (disgruntled employees have been known to report a violation when none existed). Secondly, the information CCMI ultimately provides to the County regarding a violation for which penalties will be assessed must be **thoroughly substantiated**, should the contractor appeal the decision of the Director to order the payment of corrected wages and imposition of penalties.

The need to enforce prevailing wages evenly and fairly is necessary to ensure the worker is fairly compensated, and because it maintains an even playing field for contractors when bidding work. If all are required to comply with the prevailing wage laws, then no single contractor or subcontractor is receiving an unfair advantage in the bidding process by undercutting wages.

Detailed Project/Status Information:

The best indicator of the status of any project is a review of the monthly audit that CCMI provides to the County (with a copy to the prime contractor). CCMI provides a separate audit for each subcontractor audited on the project. As the prime contractor is ultimately responsible for the payment of prevailing wages on the project and with whom the County has privity of contract. The contractor is responsible and must ensure that all subcontractors are in compliance and that they correct any deficiency. Breaking the audits down by subcontractor provides greater efficiency for the prime contractor in getting this information to each subcontractor without having to engage in a time consuming extraction of information about subcontractors from one single audit. Typically, a prime contractor can take the audit for each subcontractor and deliver it to a subcontractor by email or facsimile in a matter of minutes.

The audit identifies the payrolls reviewed, documents missing or completed incorrectly, any deficiency in wages, misclassification or underreporting of hours. If there are issues relating to fringe benefits, amortization or apprentices, these items are also noted. Additionally, each subcontractor is provided with a running total of potential penalties which may be imposed for the late submission of payrolls.

Conclusion:

CCMI recognizes that this is still a fairly new program to many contractors. As with any new program, there are new processes and procedures put in place that must be followed. All of this seems to take longer than anyone anticipates. However, CCMI's commitment is to "get it right" in whatever format and context the County ultimately decides. CCMI has national expertise in this field and hopes that this expertise will assist the County as it implements this important program.

Ensuring that the proper prevailing wage rates and the requirements of the labor compliance program are followed is an important mandate from the County Council.